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No. 548

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions certified	2
Statutes involved	2
Statement	2
Summary of argument	4
Argument:	
I. The United States, as matter of law, does not stand in the position of one who has gone into the business of insurance, and may not, therefore, be assumed to have accepted the ordinary incidents of suits in such business	7
II. In case of a finding in favor of plaintiff and intervener, judgment may not be entered against the United States for the amounts of insurance installments maturing after the action was instituted	9
III. In case of a finding and judgment in favor of plaintiff and intervener, interest is not allowable against the United States upon the monthly installments from the date they are found to be due, nor upon the judgment from the date of its entry until paid	12
IV. In case of a finding and judgment in favor of plaintiff and intervener, costs may not be awarded against the United States; and Congress has not appropriated any fund specifically for the payment of costs	24
Conclusion	26
Appendix: Statutes involved	27

CITATIONS

Cases:	
Angarica, U. S. ex rel. v. *Bayard*, 127 U. S. 251	12
Bean v. *United States*, 7 F. (2d) 393	9
Birmingham v. *United States*, 4 F. (2d) 508	9
Boston Sand & Gravel Co. v. *United States*, 278 U. S. 41	5, 12
Carter-Crume Co. v. *Peurrung*, 99 Fed. 888	10
Cassarello v. *United States*, 279 Fed. 396	9
Cherokee Nation v. *United States*, 270 U. S. 476	12
Hamlin, Hale & Co. v. *Race*, 78 Ill. 422	10
Harvey v. *United States*, 113 U. S. 243	12
Heiner v. *Colonial Trust Co.*, 275 U. S. 232	24
Helmholz v. *Horst*, 294 Fed. 417	9
Henkels v. *Sutherland*, 271 U. S. 298	12
Loveland v. *United States*, 18 F. (2d) 585; 25 F. (2d) 447; 278 U. S. 665	24

95378—30—1

Cases—Continued Page

National Lead Co. v. *United States*, 252 U. S. 140 24
Nuestra Senora de Regla, The, 108 U. S. 92 13
Paquete Habana, The, 189 U. S. 453 13
Peurrung v. *Carter-Crume Co.*, 110 Fed. 107 10
Phelps v. *United States*, 274 U. S. 341 13
Porto Rico v. *Ramos*, 232 U. S. 627 13
Richmond v. *United States*, 6 F. (2d) 143 9
Standard Oil Co. v. *United States*, 267 U. S. 76 5, 8, 13, 14
Tillson v. *United States*, 100 U. S. 43 12
Tomlinson v. *United States*, 18 F. (2d) 795 9
United States v. *Chemical Foundation*, 272 U. S. 1 24–25
United States v. *Commonwealth & Dominion Line*, 278 U. S. 427 13
United States v. *Jackson*, 34 F. (2d) 241; No. 463, October term, 1929 12, 16–20
United States v. *Lyke*, 19 F. (2d) 876 12, 15–16, 25
United States v. *McKee*, 91 U. S. 442 13
United States v. *Mayer*, 235 U. S. 55 8
United States v. *Minnesota Mutual Investment Co.*, 271 U. S. 212 12
United States v. *Napoleon*, 296 Fed. 811 11
United States v. *New York*, 160 U. S. 598 13
United States v. *Sherman*, 98 U. S. 565 12
United States v. *The Thekla*, 266 U. S. 328 13
United States v. *Woolen*, 25 F. (2d) 673; 278 U. S. 589; 278 U. S. 665 6, 21
White v. *United States*, 270 U. S. 175 5, 6, 8, 14–15

Statutes:

Marine insurance act of September 2, 1914, c. 293, 38 Stat. 711—
Sec. 3 14
Sec. 5 14
Act of June 12, 1917, c. 26, 40 Stat. 102, 103, 105—
Sec. 2 20
Sec. 5 20
Sec. 6 20
War risk insurance act of October 6, 1917, c. 105, 40 Stat. 398, 400, 410—
Sec. 400 14, 23
Sec. 405 23
World War veterans' act of 1924, c. 320, 43 Stat. 607—
Sec. 19, as amended by the acts of March 4, 1925, c. 553, sec. 2, 43 Stat 1302, and May 29, 1928, c. 875, sec. 1, 45 Stat. 964 (U. S. C. Title 38, sec. 445; U. S. C. Sup. III, Title 38, sec. 445) 24, 27–29
Sec. 300, as amended by the act of March 4, 1925, c. 553, sec. 12, 43 Stat. 1302, 1308 (U. S. C. Title 38, sec. 511) 24, 27–29

Statutes—Continued Page
World War veterans' act of 1924—Continued
Sec. 303, as amended by the act of March 4, 1925, sec. 14, 43 Stat. 1310 (U. S. C. Title 38, sec. 514) 10, 11
Sec. 304, as amended by the act of March 4, 1925, sec. 15, 43 Stat. 1310 (U. S. C. Title 38, sec. 515) 22
Sec. 305 (U. S. C. Title 38, sec. 516) 22
Sec. 306 (U. S. C. Title 38, sec. 517) 22
Sec. 309, as amended by the act of July 2, 1926, c. 723, sec. 18, 44 Stat. 790, 800 (U. S. C. App. Title 38, sec. 516b) 21
Act of March 4, 1929, c. 707, 45 Stat. 1623, 1628 25, 26
Nebraska Comp. Stat., sec. 2836 4
Miscellaneous:
Sen. Rept. No. 33, 65th Cong., 1st sess., Vol. 1 20
H. Rept. No. 62, 65th Cong., 1st sess., Vol. 1 20
Bulletin No. 1, Bureau of War Risk Insurance, October 15, 1917 23
Annual Report, Director, U. S. Veterans' Bureau, 1923, p. 675 14

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court rendered no opinion.

JURISDICTION

The case is here on the certificate of the United States Circuit Court of Appeals for the Eighth Circuit, under Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

The questions presented arise out of an action on a policy of war risk life insurance, and are stated in the certificate as follows:

> 1. Upon the facts stated [in the certificate] does the United States, as a matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?
>
> 2. In case of a finding in favor of plaintiff and intervener, may judgment be entered against the United States for the amounts of insurance installments maturing after the action was instituted?
>
> 3. In case of a finding and judgment in favor of the plaintiff and intervener, is interest allowable against the United States upon the monthly installments from the date they are found to be due?
>
> 4. In case of a finding and judgment in favor of plaintiff and intervener, may costs be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

STATUTES INVOLVED

The statutes involved are referred to, and the most recent one is copied, in the Appendix, pp. 27–29, *infra*.

STATEMENT

The facts stated in the certificate (R. 1–4) may be epitomized as follows:

The deceased insured, Emmet A. Puckett, enlisted in the Army on April 2, 1917, and was discharged on March 18, 1918. While in the service he was granted a war risk insurance contract (not evidenced by a written policy) in the sum of $10,000, under the authority of the War Risk Insurance Act of October 6, 1917 (U. S. C. Title 38, Sections 421, 511). The insured was discharged on March 18, 1918, and no premiums on the policy were thereafter paid. (R. 1.) The contract of insurance provided for the payment of $57.50 per month in the event of death or total permanent disability.

At some time, the exact date of which does not appear, the insured presented to the Veterans' Bureau a claim for permanent and total disability from the date of his discharge. At the date of his discharge, the insurance contract was in force. The claim was rejected. He died January 7, 1927. (R. 2.) Pursuant to the provisions of Section 19 of the World War Veterans' Act (U. S. C. Title 38, Sec. 445), the mother of the insured, as administratrix of his estate, brought an action against the United States in the District Court of the United States for the District of Nebraska to recover on the policy on the ground of permanent and total disability of the insured from date of discharge. As the designated beneficiary in the policy, she later intervened to recover the installments of insurance maturing after the death of the insured. (R. 2.)

The jury returned a verdict in favor of the mother as administratrix for $6,095, the aggregate amount of monthly payments due on account of disability up to the date of the death of the insured, and in favor of her as beneficiary designated in the policy for $3,905 on account of the death of the insured. The District Court entered judgment for these amounts and later entered a supplemental judgment which provided that as beneficiary she was then entitled to recover payment of $1,265, as the total amount of all installments on account of death falling due up to the time of the original judgment, including those which matured after the action was brought; that the balance of the $3,905, i. e., $2,640, should be paid her thereafter at the rate of $57.50 per month; that she recover interest at the rate of seven per centum per annum on all installments, both for disability and for death, from the respective dates when they fell due, with interest on the judgment at the same rate, and costs. (R. 3.)

The rate of interest allowed is apparently based on the rate on judgments provided by the state statute. See Sec. 2836, Comp. Stat. of Nebraska, 1922.

The Government appealed to the Circuit Court of Appeals for the Eighth Circuit, which certified the above questions to this Court. (R. 5.)

SUMMARY OF ARGUMENT

I. It is our view that the first question certified, relating to whether the United States stands in the position of one who has gone into the insurance

business and must be assumed to have accepted the ordinary incidents of suits in such business, does not present a definite question of law which this Court may be required to answer. The question presents an argumentative consideration upon the question whether interest is allowable. If it is answered, we submit that the opinion in *White* v. *United States,* 270 U. S. 175, 180, requires it to be answered in the negative.

II. Future installments can not be awarded against the United States under a policy of war risk insurance. This is an action at law for a money judgment, and the ordinary rule that the judgment can include only what the plaintiff was entitled to at the commencement of the action should apply. Furthermore, in the event of the death of the beneficiary, the balance of the proceeds of the policy must be paid in accordance with the provisions of the World War Veterans' Act, and would pass to such other persons as may be entitled thereto under the provisions of the Act.

III. In *Boston Sand & Gravel Co.* v. *United States,* 278 U. S. 41, 47, this Court held that interest can not be awarded against the United States except where it assumes that liability by contract or it is so provided by express words of the statute, or where it must pay it as part of just compensation. Neither the statute nor contract allows it, and "just compensation" is not involved. The language of this Court in *Standard Oil Company* v. *United States,* 267 U. S. 76, holding that interest was allow-

able against the United States on the ground that when the United States went into the insurance business it must be assumed to have accepted the ordinary incidents of suits in such business, which case was based on a policy of marine insurance issued by the Government on a steamship and her freight and advances against war risks, pursuant to the Act of September 2, 1914, c. 293, 38 Stat. 711, is not controlling in the case under consideration, which was brought to recover on a policy of war risk life insurance issued by the Government under authority of the War Risk Life Insurance Act of October 6, 1917. Marine insurance under the 1914 Act and life insurance under the 1917 Act are distinct and controlled by different principles, as shown by the ruling of this Court in *White* v. *United States,* 270 U. S. 175, 180.

Our contentions are supported by decisions of the Circuit Courts of Appeals for the Ninth and Tenth Circuits. There is no decision of any Circuit Court of Appeals contrary to them. The decision of the Circuit Court of Appeals for the Sixth Circuit in *United States* v. *Woolen,* 25 F. (2d) 673, allowed interest at the rate of five per centum, compounded annually, and this was based solely upon a misconstruction of Section 309 of the World War Veterans' Act, as amended. The Veterans' Bureau has never paid interest on accrued installments, and its construction of the Act—impliedly recognized by Congress by reenacting substantially the same language of the original Act—is entitled to weight.

IV. It is the settled general rule that costs can not be awarded against the United States in the absence of statutory authority therefor. The Acts of Congress relating to war risk life insurance make no provision for costs, and the Government has never paid costs in litigation under these Acts. Congress has not appropriated any fund specifically for the payment of costs.

ARGUMENT

I

THE UNITED STATES, AS MATTER OF LAW, DOES NOT STAND IN THE POSITION OF ONE WHO HAS GONE INTO THE BUSINESS OF INSURANCE, AND MAY NOT, THEREFORE, BE ASSUMED TO HAVE ACCEPTED THE ORDINARY INCIDENTS OF SUITS IN SUCH BUSINESS

The first question certified reads:

> Upon the facts above stated, does the United States, as matter of law, stand in the position of one who has gone into the business of insurance and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?

It is our view that the above question does not present any definite and clear-cut question of law such as this Court may be required to answer on certificate. The facts stated in the certificate do not necessitate an answer to the question thus broadly phrased. The specific questions presented by the certificate are those relating to the allowability of amounts of insurance installments ma-

turing after the action was instituted and of interest and costs, which are covered by the second, third, and fourth questions propounded.

Question 1 seems to present simply an argumentative consideration bearing particularly upon the question of the allowability of interest. Its phraseology clearly refers to the language of this Court in the case of *Standard Oil Company* v. *United States,* 267 U. S. 76, 79, which is relied upon by the plaintiff in support of such an allowance, and will be dealt with in our argument upon the interest question. We submit that, upon the facts stated in the certificate, the inquiry propounded in Question 1 is significant only in relation to that question and that, separately considered, it is abstract and hypothetical and need not be answered. See *United States* v. *Mayer,* 235 U. S. 55, 66–67, in which the authorities are collected.

If this Court should consider that Question 1 ought to be separately answered, we submit that the opinion in *White* v. *United States,* 270 U. S. 175, 180, requires that it be answered in the negative. This case will also be discussed in connection with our treatment of the question of interest. In addition to the *White case,* the following decisions of the lower Federal courts have held that war risk life insurance is a special statutory kind of insurance and that the contracts issued by the Government are, therefore, not to be construed according to the principles of law applicable to policies of insurance issued by commercial companies. *Cassa-*

rello v. *United States* (C. C. A. 3d), 279 Fed. 396; *Helmholz* v. *Horst* (C. C. A. 6th), 294 Fed. 417; *Birmingham* v. *United States* (C. C. A. 8th), 4 F. (2d) 508; *Richmond* v. *United States* (C. C. A. 5th), 6 F. (2d) 143; *Bean* v. *United States* (D. C. Kan.), 7 F. (2d) 393; *Tomlinson* v. *United States* (D. C. Mont.), 18 F. (2d) 795.

II

IN CASE OF A FINDING IN FAVOR OF PLAINTIFF AND INTERVENER, JUDGMENT MAY NOT BE ENTERED AGAINST THE UNITED STATES FOR THE AMOUNTS OF INSURANCE INSTALLMENTS MATURING AFTER THE ACTION WAS INSTITUTED

A suit on a contract of war risk life insurance is authorized by Section 19 of the World War Veterans' Act (U. S. C., Title 38, Sec. 445), (*infra,* pp. 27–29) and is an action at law for the recovery of a money judgment. We submit therefore that the court can award no more than the sum of the installments accrued at the date of the institution of the action. A $10,000 policy of war risk insurance is payable, with certain exceptions not here material, at the rate of $57.50 per month during the period of total permanent disability or in case of death at the same rate to the beneficiary until the full amount is paid.

There would seem to be no reason for departing from the ordinary rule that in an action at law on a contract the plaintiff can recover only such installments as were due at the time of bringing the

action. See *Hamlin, Hale & Co.* v. *Race,* 78 Ill. 422; *Peurrung* v. *Carter-Crume Co.,* 110 Fed. 107, 109, where authorities are collected. (An intimation that plaintiff by supplemental petition may recover all installments which have fallen due between the time of the filing of the original petition and the judgment is found in the opinion of the Circuit Court of Appeals for the Sixth Circuit in this case. *Carter-Crume Co.* v. *Peurrung,* 99 Fed. 888, 890.) But the question whether installments maturing between the date of commencing the action and the date of judgment may be recovered is of no practical importance, inasmuch as the Veterans' Bureau would, of course, pay such installments if the right to any recovery is established by a judgment.

A substantial question is raised by the action of the District Court in entering judgment for the plaintiff for installments becoming due after the date of the judgment. If the recovery is on account of death of the insured, there is always the possibility that the plaintiff beneficiary may die before the time when the last installment becomes due. Section 14 of the Act of March 4, 1925, c. 553, 43 Stat. 1302, 1310 (U. S. C., Title 38, Section 514), provides—

> * * * if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there

> shall be paid to the estate of the insured the present value of the monthly installments thereafter payable * * *.

A judgment such as that rendered in the instant case might result in compelling the Government to make a double payment, i. e., to the estate of the beneficiary under the judgment and to the estate of the insured under the above provisions of the statute. We consequently submit that no judgment should include installments due after the date of the judgment.

In *United States* v. *Napoleon* (C. C. A. 5th), 296 Fed. 811, 815, an action by beneficiaries under a policy of war risk insurance for payments on account of the death of the insured, the court said:

> The judgment signed in petitioners' favor for $10,000, to be paid in 240 equal monthly installments, is erroneous as to amount. This is an action at law which is permissible under the Tucker Act. See section 4; *Chase* v. *United States,* 155 U. S. 489, 499, 15 Sup. Ct. 174, 39 L. Ed. 234. In a suit at law for the recovery of money due in installments under a single contract, judgment may be had for such installments only as are due when suit is brought. 1 C. J. 1112, 1148; *Carter-Crume Co.* v. *Peurrung,* 99 Fed. 888, 40 C. C. A. 150, affirming (C. C.) 110 Fed. 107. Should these petitioners die before the accrual of all the installments, the right to recover then would, under the law, pass to others.

The United States Circuit Court of Appeals for the Tenth Circuit in *United States* v. *Jackson*, 34 F. (2d) 241, and the United States Circuit Court of Appeals for the Ninth Circuit in *United States* v. *Lyke*, 19 F. (2d) 876, followed the same rule in actions brought by the insured himself claiming permanent and total disability.

III

IN CASE OF A FINDING AND JUDGMENT IN FAVOR OF PLAINTIFF AND INTERVENER, INTEREST IS NOT ALLOWABLE AGAINST THE UNITED STATES UPON THE MONTHLY INSTALLMENTS FROM THE DATE THEY ARE FOUND TO BE DUE, NOR UPON THE JUDGMENT FROM THE DATE OF ITS ENTRY UNTIL PAID

In *Boston Sand and Gravel Co.* v. *United States*, 278 U. S. 41, this Court said (p. 47):

> We start with the rule that the United States is not liable to interest except where it assumes the liability by contract or by the express words of a statute, or must pay it as part of the just compensation required by the Constitution. *Seaboard Air Line Ry. Co.* v. *United States*, 261 U. S. 299, 304, 306.

The following are cases in which the rule is illustrated or applied: *United States* v. *Sherman*, 98 U. S. 565; *Tillson* v. *United States*, 100 U. S. 43; *Harvey* v. *United States*, 113 U. S. 243; *United States ex rel. Angarica* v. *Bayard*, 127 U. S. 251; *Cherokee Nation* v. *United States*, 270 U. S. 476; *United States* v. *Minnesota Mut. Invest. Co.*, 271 U. S. 212; *Henkels* v. *Sutherland*, 271 U. S. 298;

United States v. *Commonwealth & Dominion Line*, 278 U. S. 427.

The instant case would not seem to come within any of the exceptions to the above rule which were enunciated in *United States* v. *McKee*, 91 U. S. 442; *The Nuestra Senora de Regla*, 108 U. S. 92; *United States* v. *New York*, 160 U. S. 598; *The Paquete Habana*, 189 U. S. 453; *Porto Rico* v. *Ramos*, 232 U. S. 627; *United States* v. *The Thekla*, 266 U. S. 328; or *Phelps* v. *United States*, 274 U. S. 341.

The Acts of Congress relating to war risk life insurance and the contract of insurance do not provide for any interest against the United States. (See pp. 18, 27–29, *infra*.) Of course "just compensation" is not involved. The case, therefore, falls squarely within the rule announced by this Court, quoted above, unless the Government is liable for interest on a contract of war risk life insurance by reason of the rule enunciated in *Standard Oil Company* v. *United States*, 267 U. S. 76. In that case a libel was filed against the United States on a policy of marine insurance issued by the Government on a steamship and her freight and advances against war risks, pursuant to the Act of September 2, 1914, c. 293, 38 Stat. 711. In allowing interest against the Government in that case, this Court said (page 79):

> When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagree-

> ment it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business.

The Act of September 2, 1914, indicates that it was contemplated that the marine insurance business of the Government should be conducted by the Government upon principles similar to those adopted by commercial companies. Thus the Bureau of War Risk Insurance, which was created by the Act, was authorized "to adopt and publish a form of war risk policy, and to fix reasonable rates of premium for the insurance of American vessels," etc. (Section 3), and the Secretary of the Treasury was authorized " to establish an advisory board, to consist of three members skilled in the practices of war risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act" (Section 5). As a matter of fact, the operations of this business resulted in a net profit to the Government of over $17,000,000. Annual Report of the Director, United States Veterans' Bureau, 1923, p. 675.

In an entirely different category is war risk life insurance issued by the Government pursuant to the provisions of the War Risk Life Insurance Act of October 6, 1917, c. 105, Sec. 400, 40 Stat. 398, 409. This is shown by the following language of this Court in the case of *White* v. *United States,* 270 U. S. 175, 180:

> The certificate of insurance provided in terms that it should be "subject in all respects to the provisions of such Act [of 1917] * * *." The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good.

Following the principle announced by this Court in the *White case,* the courts have held generally that war risk life insurance is a special statutory kind of insurance and that contracts issued by the Government therefor are not to be construed according to the principles of law applicable to policies of insurance issued by commercial companies. See authorities cited on p. 9, *supra.*

In *United States* v. *Lyke,* 19 F. (2d) 876, 877, *supra,* the Circuit Court of Appeals for the Ninth Circuit said:

> We are of the opinion that interest was not allowable. It is a settled rule that, in the absence of a stipulation to pay interest or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims. *United States* v. *Rogers,* 255 U. S. 163, 169, 41 S. Ct. 281, 65 L. Ed. 566; *United States* v. *North American Transportation & Trading Co.,* 253 U. S. 330, 40 S. Ct. 518, 64 L. Ed. 935.

> The defendant in error cites *Standard Oil Co.* v. *United States,* 267 U. S. 76, 45 S. Ct. 211, 69 L. Ed. 519, as authorizing a judgment for interest. Interest was there allowed on a marine insurance policy, on the ground that the United States had gone into the insurance business and had accepted the ordinary incidents of suits in such cases. The reasoning on which that conclusion was reached does not apply to the present case. The war risk insurance contract for the soldier is not a business contract. It partakes of the nature of both insurance and pension. It is a "relation of benevolence, established by the government at considerable cost to itself, for the soldier's good." *White* v. *United States,* 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530; *Bean* v. *United States* (D. C.) 7 F. (2d) 393, 396.
>
> We find no ground for holding that it was the intention of Congress, in providing for such insurance, to abrogate the established rule against the allowance of interest on claims against the United States.

The Circuit Court of Appeals for the Tenth Circuit in the *United States* v. *Jackson,* 34 F. (2d) 241, *supra* (certiorari granted, Dec. 2, 1929; No. 463, Oct. Term, 1929), declined to allow interest against the United States and said (pp. 242–243):

> Neither the statute nor the contract of war risk insurance makes express provision for the payment of interest. If the United States is liable for interest, it must be because of an implied provision of the contract.

In the case of *Standard Oil Co. of N. J.* v. *United States*, 267 U. S. 76, 45 S. Ct. 211, 69 L. Ed. 519, which was an action upon a policy of marine insurance issued under the provisions of the Act of September 2, 1914 (38 Stat. 711), the court held that, when the United States went into the business of insurance, issued policies in familiar form, and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business, including the payment of interest. This case was relied upon by the trial court as authority for awarding interest in the instant case.

It is true that Congress, by the same statute, created the Bureau of War Risk Insurance and authorized the government to issue policies of marine insurance and policies of life and permanent disability insurance. However, the acts of Congress disclose that the nature and purposes of the two classes of insurance differed in material particulars. Marine insurance was first authorized by the Act of September 2, 1914 (38 Stat. 711). Section 2 thereof reads as follows:

"That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary

that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms."

The provisions for life and disability insurance were provided by the amendment of October 6, 1917 (40 Stat. 409).

Section 400 of article 4 of the Act of October 6, 1917, reads as follows:

"That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided."

In the Standard Oil Case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. On the contrary, in issuing life and disability insurance policies, under the provisions of the amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form. Furthermore, under such policies the

payments to be made in case of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension.

In the case of *Birmingham* v. *United States* (C. C. A.), 4 F. (2d) 508, 509, the Court said:

"The government in devising and putting in effect its plan of war risk insurance did not enter the field of business in the accepted sense for commercial purposes and pecuniary gain, and therefore does not stand in the same relation to the insured as do ordinary insurance companies. It can be held only to the extent that it has expressly consented to be held upon contracts of this nature."

* * * * *

Since the government, by issuing its policies of life and permanent disability insurance under the provisions of the amendment of October 6, 1917, did not go into the life and disability insurance business, and since contracts of insurance issued thereunder were not the same as ordinary insurance contracts issued by private life insurance companies, but provided for payments partially in the nature of insurance and partially in the nature of pension, we do not think it follows that by issuing such contracts and consenting to be sued thereon the United States accepted the ordinary incidents of suits upon ordinary contracts of life insurance, including liability for interest. It follows that the contract contained no implied promise to pay

interest. It is therefore our conclusion that the court erred in awarding interest.

The Act of October 6, 1917, was the original statute granting war risk life insurance by the United States, and it provided for those in the *military* service. The Act of June 12, 1917, c. 26, 40 Stat. 102, amending and re-enacting the Marine Insurance Act of September 2, 1914, provided in Sections 2, 5, and 6 that provision should be made by the Secretary of the Treasury for insuring "the masters, officers, and crews" of American merchant vessels against loss of life or personal injury by the risks of war (Sec. 2) and that—

> the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks. (Sec. 5.)

If the owner failed to carry such insurance, the Secretary of the Treasury was authorized—

> to effect such insurance with the Bureau of War Risk Insurance at the *expense of the owner of such vessel,* and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding $1,000. (Sec. 6, p. 104.) (Italics ours.)

As shown by the legislative history of the Act, one of the main purposes of requiring the owners of vessels to carry that insurance, *at their expense,* was to encourage American shipping. (Senate Report 33 and House Report 62, Vol. 1, 65th Cong.,

1st Sess.) That insurance is vastly different from the life insurance granted those in the military service at enormous expense to the Government, to provide "protection for themselves and their dependents." (Sec. 400, *supra*, p. 18.)

The only war risk life insurance case in which a Circuit Court of Appeals allowed interest against the United States is *United States* v. *Woolen*, 25 F. (2d) 673. There the Circuit Court of Appeals for the Sixth Circuit allowed interest at the rate of 5 per centum compounded annually, solely because of the following provisions of Section 309 of the World War Veterans' Act, as amended by the Act of July 2, 1926, c. 723, Sec. 18, 44 Stat. 790, 800 (U. S. C. App. Title 38, Sec. 516b):

> Where any person allowed his insurance to lapse and died after February 24, 1919, and prior to collecting the $60 bonus provided by the Act of February 24, 1919 (Fortieth Statutes at Large, page 1151), then and in that event his insurance shall not be considered as lapsed during such period as said uncollected bonus would, if applied to the payment of premiums when due, equal or exceed the same, and the United States Veterans' Bureau is hereby authorized and directed to pay to his beneficiaries under said policy the amount of said insurance, less the premiums and interest thereon at 5 per centum per annum, compounded annually, in installments, as provided by law.

We submit that that provision for compound interest at the rate of 5 per centum obviously directs its addition to the amount of the defaulted premiums and does not contemplate that the beneficiary shall receive interest at 5 per centum per annum compounded annually on the installments of the insurance from the date they would have been payable if the insurance had not lapsed. Similar provisions occur in Sections 304, 305, and 306 of the World War Veterans' Act of 1924. Sections 304 and 306 contain language which is impossible of any construction other than that the interest at the rate of five per centum per annum compounded annually is to be paid by the veterans on the back monthly premiums; and it is inconceivable that Congress intended by Section 309 to relieve the insured of the payment of interest on his premiums and also to provide for the payment of interest to him.

In the *Woolen case* the Government filed a petition for certiorari which was granted, 278 U. S. 589, and before the case was reached the parties entered into a stipulation eliminating interest; the judgments of the two lower courts were vacated, and the case, on motion of the Solicitor General, was remanded to the District Court for the entry of a judgment against the Government without interest or costs, 278 U. S. 665.

The consistent practice of the Veterans' Bureau has been not to pay interest on accrued installments under war risk life insurance policies. The sections of the statutes authorizing the issuance of war risk life insurance and conferring

jurisdiction on the District Courts to hear and determine controversies arising upon claims under contracts of war risk insurance contain no provision for the allowance of interest in any judgment against the United States and nowhere in the war risk insurance legislation is any authority conferred for its allowance against the Government. (See pp. 27–28, *infra.*) Complete policies were never issued for term insurance, but the terms and conditions of such insurance were provided by Bulletin No. 1, promulgated by the Director of the Bureau of War Risk Insurance under date of October 15, 1917. The terms and conditions of the insurance there published contain no mention of interest and no language giving any indication that interest was to be paid under any circumstances. The policies of Government life insurance, to which by law all term insurance later had to be converted, make no provision for the payment of interest, but do contain the following:

> Upon due proof of the death of the insured while this policy is in force, the monthly installments, without interest, which have accrued since the death of the insured, * * * shall be paid to the beneficiary designated, * * *.

The first Act was passed in 1917, Section 400 of which authorized the issuance of this insurance and Section 405 of which made provision for action against the Government. Substantially the same provisions were carried into the World War Vet-

erans' Act of June 7, 1924, as Sections 19 and 300, respectively, and into the Act of March 4, 1925, c. 553, Secs. 2, 12, 43 Stat. 1302, 1308. The interpretation of the Veterans' Bureau has thus been impliedly recognized and approved by Congress, and is entitled to weight. *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232, 235; *National Lead Co.* v. *United States*, 252 U. S. 140, 146.

(The only departure from the consistent practice which we know was in the case of *Loveland* v. *United States*, 18 F. (2d) 585, in which, owing to the fact that the stipulation waiving jury trial was not in writing, the Government was obliged to confess error when the claimant filed a petition for certiorari to review the decision of the Circuit Court of Appeals for the Third Circuit, 25 F. (2d) 447, which reversed the judgment of the District Court in favor of the claimant. 278 U. S. 665.)

IV

IN CASE OF A FINDING AND JUDGMENT IN FAVOR OF PLAINTIFF AND INTERVENER, COSTS MAY NOT BE AWARDED AGAINST THE UNITED STATES; AND CONGRESS HAS NOT APPROPRIATED ANY FUND SPECIFICALLY FOR THE PAYMENT OF COSTS

The general rule is that costs can not be awarded against the United States in the absence of a statute specifically authorizing same. The Acts of Congress pertaining to war-risk life insurance contain no provision whatever permitting costs to be awarded against the Government.

In *United States* v. *Chemical Foundation*, 272 U. S. 1, 20, this Court said:

> The general rule is that, in the absence of a statute directly authorizing it, courts will not give judgment against the United States for costs or expenses. *United States* v. *Hooe,* 3 Cranch 73, 91, 92; *Shewan and Sons* v. *United States,* 267 U. S. 86; *United States* v. *Davis,* 54 Fed. 147, 152, *et seq.*

In judgments entered under contracts of war risk insurance there is no reason for making an exception to the general rule as above stated by this Court. The Circuit Court of Appeals for the Ninth Circuit held in *United States* v. *Lyke,* 19 F. (2d) 876, 878, *supra,* that costs can not be taxed against the United States in a judgment on a contract of war risk life insurance. We know of no decision of any court to the contrary, except that of the District Court in the instant case.

The Government has never paid costs in litigation on contracts of war risk life insurance.

The Acts appropriating money for war risk life insurance make no mention of costs. The last appropriation for the Veterans' Bureau is contained in the Act of March 4, 1929, c. 707, 45 Stat. 1623, 1628, and is in the following language:

> UNITED STATES VETERANS' BUREAU
>
> Military and naval insurance: The sum of $7,500,000 of the unexpended balance of the appropriation "Military and naval compensation, Veterans' Bureau, 1928 and prior years," and $1,000,000 of the unexpended balance of the appropriation "Salaries and expenses, Veterans' Bureau, 1928," are

hereby reappropriated and made available for the purposes of the appropriation "Military and naval insurance, Veterans' Bureau, 1929 and prior years."

As no costs had ever been paid, the amount estimated and appropriated contained no allowance for costs.

CONCLUSION

It is respectfully submitted that Questions 2, 3, and 4, should be answered in the negative, and if the Court should deem it proper and necessary to answer Question 1, it should likewise be answered in the negative.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

J. FRANK STALEY,
W. CLIFTON STONE,
Attorneys.

FEBRUARY, 1930.

APPENDIX

STATUTES INVOLVED

The War Risk Insurance Act of October 6, 1917, in Section 400, 40 Stat. 409, provided for the issuance by the Government of policies of war risk life insurance, and Section 405 of the Act, 40 Stat. 410, (U. S. C., Title 38, Sec. 445), made provision for suit against the Government in the event of disagreement as to a claim under a contract of insurance between the Bureau of War Risk Insurance (Veterans' Bureau) and any person claiming thereunder. The same provisions were carried into the World War Veterans' Act of June 7, 1924, as Sections 300 and 19, respectively, c. 320, 43 Stat. 624, 612; U. S. C., Title 38, Secs. 511 and 445, and also into the Act of March 4, 1925, c. 553, Secs. 2, 12, 43 Stat. 1302, 1308. Sec. 19, as amended by the Acts of March 4, 1925, c. 553, Sec. 2, 43 Stat. 1302, and May 29, 1928, c. 875, Sec. 1, 45 Stat. 964, provides:

"In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and de-

termine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled 'An Act to provide for the bringing of suits against the Government of the United States,' approved March 3, 1887, and section 10 thereof insofar as applicable. All persons having or claiming to have an interest in such insurance may be made parties to such suit, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the bureau acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the bureau in the name of the United States against all persons having or claiming to have any interest in such insurance in the Supreme Court of the District of Columbia or in the district court in and for the district in which any of such claimants reside: *Provided,* That not less than thirty days prior to instituting such suit the bureau shall mail a notice of such intention to each of the persons to be made parties to the suit. The circuit courts of appeal and the Court of Appeals of the District of Columbia shall respectively exercise appellate jurisdiction and, except as provided in sections 239 and 240 of the Judicial Code, the decrees of the circuit courts of appeal and the Court of Appeals of the District of Columbia shall be final. This section shall apply to all suits now pending against the United States under the provisions of the War Risk Insurance Act as amended, or of the World War Veterans' Act, 1924, and amendments thereto. (U. S. C., Title 38, Sec. 445.)

"No suit shall be allowed under this section unless the same shall have been brought within six

years after the right accrued for which the claim is made, or within one year from the date of the approval of this amendatory Act, whichever is the later date: *Provided,* That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further,* That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the bureau shall have three years in which to bring suit after the removal of their disabilities. If suit is seasonably begun and fails for defect in process, or for other reasons not affecting the merits, a new action, if one lies, may be brought within a year though the period of limitations has elapsed. Judgments heretofore rendered against the person or persons claiming under the contract of war-risk insurance on the ground that the claim was barred by the statute of limitations shall not be a bar to the institution of another suit on the same claim. No State or other statute of limitations shall be applicable to suits filed under this section. This section shall apply to all suits now pending against the United States under the provisions of this section." (U. S. C. Sup. III, Title 38, Sec. 445.)

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